

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through XI, the amendment of)	ON PROPOSED ADOPTION,
ARM 37.88.206, 37.88.306, 37.88.606,)	AMENDMENT, AND REPEAL
37.89.103, 37.89.106, 37.89.114,)	
37.89.115, 37.89.118, 37.89.119, and)	
37.89.131, and the repeal of 37.86.112)	
and 37.89.135 pertaining to the mental)	
health services plan)	

TO: All Interested Persons

1. On August 6, 2008 at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on July 28, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

RULE I MENTAL HEALTH FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

- (1) "Applicant" means a youth with SED for whom the process to determine eligibility has been initiated but not completed.
- (2) "Correctional or detention facility" means:
 - (a) the Pine Hills youth correctional facility;
 - (b) the Riverside youth correctional facility;
 - (c) a Department of Corrections boot camp;
 - (d) a juvenile detention center;
 - (e) a city or county criminal detention facility; or
 - (f) any privately operated or out-of-state correctional or detention facility that the state of Montana may choose to utilize in place of one of the above facilities or categories of facilities.
- (3) "Covered diagnosis" services are defined in ARM 37.89.103.

(4) "Emergency" means a serious medical or behavioral condition resulting from mental illness which arises unexpectedly and manifests symptoms of sufficient severity to require immediate care to avoid jeopardy to the life or health of the youth or harm to another person by the youth.

(5) "Federal poverty level" or "FPL" means the poverty guidelines for the 48 contiguous states and the District of Columbia as published under the "Annual Update of the HHS Poverty Guidelines" in the Federal Register each year on or about February 15 and subsequent annual updates.

(6) "Inpatient psychiatric services" means psychiatric care provided in a licensed hospital, psychiatric residential treatment facility, or hospital-based residential psychiatric care.

(7) "Licensed mental health center" means a mental health center licensed in accordance with ARM 37.106.1906 through 37.106.1965.

(8) "Medically necessary" for Medicaid and MHSP is defined as provided in ARM 37.82.102.

(9) "Mental health professional" means a psychiatrist, licensed psychologist, licensed clinical social worker, or licensed professional counselor.

(10) "Mental Health Services Plan (MHSP)" for youth with SED, in accordance with [RULES I through XI] is a defined set of services.

(11) "Provider" means a person or entity that has enrolled and entered into a provider agreement with the department in accordance with the requirements of ARM 37.85.401 through 37.85.513 to provide mental health services to youth with SED on Medicaid or the Mental Health Services Plan.

(12) "Provider agreement" means the written enrollment agreement entered into between the department and a person or entity to provide mental health services to youth with SED.

(13) "Serious Emotional Disturbance (SED)" criteria are defined in [RULE II].

(14) "System of Care Account" is defined in 52-2-309, MCA, and allows the department to fund via the state special revenue fund the administering and delivering of services to high-risk youth with multiagency service needs and to provide for the youth's care, protection, and mental, social, and physical development.

(15) "Youth" means:

(a) for Medicaid services, a person 17 years of age and younger or a person who is up to 20 years of age and is enrolled in secondary school; or

(b) for MHSP, a person through 17 years of age and younger and is not eligible for Medicaid or the Children's Health Insurance Plan (CHIP) and meet the financial eligibility for MHSP.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE II YOUTH MENTAL HEALTH SERVICES, SERIOUS EMOTIONAL DISTURBANCE CRITERIA (1) "Serious emotional disturbance (SED)" means with respect to a youth from the age of six through 17 years of age that the youth meets the requirements of (1)(a) and (1)(b).

(a) The youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:

- (i) childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90);
- (ii) oppositional defiant disorder (313.81);
- (iii) autistic disorder (299.00);
- (iv) pervasive developmental disorder not otherwise specified (299.80);
- (v) Asperger's disorder (299.80);
- (vi) separation anxiety disorder (309.21);
- (vii) reactive attachment disorder of infancy or early childhood (313.89);
- (viii) schizo affective disorder (295.70);
- (ix) mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);
- (x) obsessive-compulsive disorder (300.3);
- (xi) dysthymic disorder (300.4);
- (xii) cyclothymic disorder (301.13);
- (xiii) generalized anxiety disorder (overanxious disorder) (300.02);
- (xiv) posttraumatic stress disorder (chronic) (309.81);
- (xv) dissociative identity disorder (300.14);
- (xvi) sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89);
- (xvii) anorexia nervosa (severe) (307.1);
- (xviii) bulimia nervosa (severe) (307.51);
- (xix) intermittent explosive disorder (312.34); and
- (xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.

(b) As a result of the youth's diagnosis determined in (1)(a) and for a period of at least six months, or for a predictable period over six months the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to intellectual, sensory, or health factors:

- (i) has failed to establish or maintain developmentally and culturally appropriate relationships with adult care givers or authority figures;
- (ii) has failed to demonstrate or maintain developmentally and culturally appropriate peer relationships;
- (iii) has failed to demonstrate a developmentally appropriate range and expression of emotion or mood;
- (iv) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic, or recreation settings;
- (v) has displayed behavior that is seriously detrimental to the youth's growth, development, safety, or welfare, or to the safety or welfare of others; or
- (vi) has displayed behavior resulting in substantial documented disruption to the family including, but not limited to, adverse impact on the ability of family members to secure or maintain gainful employment.

(c) SED with respect to a youth under six years of age means the youth exhibits a severe behavioral abnormality that cannot be attributed to intellectual, sensory, or health factors and that results in substantial impairment in functioning for a period of at least six months and obviously predictable to continue for a period of at least six months, as manifested by one or more of the following:

(i) atypical, disruptive, or dangerous behavior which is aggressive or self-injurious;

(ii) atypical emotional responses which interfere with the child's functioning, such as an inability to communicate emotional needs and to tolerate normal frustrations;

(iii) atypical thinking patterns which, considering age and developmental expectations, are bizarre, violent, or hypersexual;

(iv) lack of positive interests in adults and peers or a failure to initiate or respond to most social interaction;

(v) indiscriminate sociability (e.g., excessive familiarity with strangers) that results in a risk of personal safety of the child; or

(vi) inappropriate and extreme fearfulness or other distress which does not respond to comfort by care givers.

(d) A youth must be reassessed annually by a licensed mental health professional as to whether or not they continue to meet the criteria for having a serious emotional disturbance. For the initial or for an annual reassessment, the clinical assessment must document how the youth meets the criteria for having a serious emotional disturbance.

(2) The department adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the Ingenix ICD-9-CM Code Book (2006), published by Ingenix. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated in order to provide common references for purposes of the provision of services through the Mental Health Services Plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE III MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) An individual is eligible for covered services under the MHS plan if:

(a) the individual is a youth through 17 years of age and younger with a serious emotional disturbance in accordance with [RULE II];

(b) the family of which the individual is a member has a total family income, without regard to other family resources, at or below 160% of the most recently published federal poverty level (FPL); and

(c) the youth is not eligible for Medicaid or the Children's Health Insurance Plan (CHIP).

(2) If a youth who is determined eligible for the MHS plan based upon a pending Medicaid application is later determined to be eligible for Medicaid:

(a) any payment received by the provider under the MHS plan for services provided during the effective period of Medicaid eligibility must be refunded to the department; and

(b) all services provided to the youth during the effective period of Medicaid eligibility may be billed to Medicaid according to applicable Medicaid requirements.

(3) For purposes of determining financial eligibility under (1), the department references the criteria outlined in ARM 37.79.201, 37.79.206, and 37.79.209 except for:

(a) the annual family income without regard to other family resources is at or below 160% of FPL;

(b) the applicant's family member may be employed by the state of Montana; and

(c) the applicant's family does not have to meet the requirement of having had creditable health insurance coverage prior to becoming eligible.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE IV. MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, LIMITATIONS (1) This subchapter is not intended to and does not establish an entitlement for any youth to be determined eligible for or to receive any services under the plan. The department may, in its discretion, limit services, rates, eligibility, and the number of youth determined eligible under the plan based upon such factors as availability of funding, the degree of financial need, the degree of medical need, or other factors.

(a) If the department determines with respect to the MHS plan that it is necessary to reduce, limit, suspend, or terminate eligibility or benefits, reduce provider reimbursement rates, reduce or eliminate service coverage or otherwise limit services, benefits, or provider participation rates, in a manner other than provided in this subchapter, the department may implement such changes by providing ten days advance notice published in Montana major daily newspapers with statewide circulation, and by providing:

(i) ten days advance written notice of any individual eligibility and coverage changes to affected **enrolled youth**; and

(ii) ten days advance written notice of coverage, rate, and provider participation changes to affected providers.

(2) If the department determines that the average per-case cost of Mental Health Services Plan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

(a) The department will place the names of youth applying for enrollment who would be eligible but for the suspension of new enrollments on a waiting list.

(b) When total MHSP enrollment falls below the number which, when multiplied by the average per-case cost, equals total appropriations, the department will enroll youth whose names appear on the waiting list. Enrollment from the waiting list will be made in order of severity of need, with qualified applicants whose needs are most severe first as determined by the department based on the following:

- (i) diagnosis;
- (ii) functional impairment as evaluated by a licensed mental health professional designated by the department; or
- (iii) availability of appropriate alternative means to obtain treatment.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE V MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, COVERED SERVICES (1) Medically necessary mental health services for a youth with SED who meets financial criteria are covered under the plan for enrolled youth, except as provided in this subchapter.

(2) Covered services include:

- (a) evaluation and assessment of psychiatric conditions by licensed and enrolled mental health providers;
- (b) primary care providers, as defined in ARM 37.86.5001, for screening and identifying psychiatric conditions and for medication management;
- (c) a psychotropic drug formulary, as specified in (4);
- (d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis; and
- (e) treatment planning, individual, group and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of covered diagnoses in private practice or in mental health centers.

(3) Coverage of medically necessary mental health services for a covered diagnosis will not be denied solely because the member also has a noncovered diagnosis.

(4) The plan covers the medically necessary psychotropic medications listed in the department's Mental Health Services Plan drug formulary if medically necessary with respect to a covered diagnosis. The department may revise the formulary from time to time. A copy of the current formulary may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(5) The MHS plan covers medically necessary mental health services for any covered diagnosis for a member with a primary diagnosis of mental retardation or developmental disability, but does not cover treatment, habilitation, or other services required by the member's mental retardation or developmental disability.

(6) The MHS plan does not cover:

- (a) inpatient or emergency hospital services;
- (b) inpatient psychiatric residential treatment services;
- (c) any form of transportation services; and
- (d) detoxification, drug or alcohol evaluation, treatment, or rehabilitation, regardless of the member's diagnosis.

(7) A youth who is in a correctional or detention facility is not entitled to services under the plan, except as specifically provided in these rules.

(a) The plan covers discharge planning services in relation to a covered diagnosis prior to release from a correctional or detention facility for a youth who is:

- (i) within 60 days of release;
- (ii) a youth under the custody of the department's division of child and family services or the Department of Corrections and who is in a correctional or detention facility;
- (iii) being held in a juvenile correction facility.

(b) A youth incarcerated in a local government criminal detention facility who has not been adjudicated may receive medically necessary mental health services for covered diagnosis during incarceration, except that the plan does not cover the youth's security or detention needs.

(c) A youth may receive medically necessary mental health services for covered diagnoses after leaving the correctional or detention facility, except that the plan does not cover the youth's security or detention needs.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VI MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER PARTICIPATION

(1) Providers of services may request enrollment in the plan and may participate in the plan only upon approval of enrollment and according to the written provider agreement between the provider and the department and the requirements of this subchapter.

(a) The provisions of ARM 37.85.402 shall apply for purposes of provider enrollment in the plan. Providers must enroll with the department's Medicaid fiscal agent in the same manner and according to the same requirements applicable under the Montana Medicaid Program. The department may accept current Medicaid enrollment for purposes of enrollment under the plan, if the provider agrees, in a form acceptable to the department, to be bound by applicable plan requirements.

(b) For purposes of enrollment in the plan, providers must be and remain enrolled in the Montana Medicaid program for the same category of service and must meet the same qualifications and requirements that apply to the provider's category of service under the Montana Medicaid program.

(2) Providers in the following categories may request enrollment in the MHS plan:

- (a) psychiatrists;
- (b) primary care providers, as defined in ARM 37.86.5001;

- (c) licensed psychologists;
- (d) licensed clinical social workers;
- (e) licensed professional counselors; and
- (f) outpatient pharmacies.

(3) A provider who is denied enrollment has no right to an administrative review or fair hearing as provided in ARM 37.5.304, et seq. or any other department rule.

(a) Enrollment does not imply or create any guarantee of or right to any level of utilization or reimbursement for any provider.

(4) The provisions of ARM Title 37, chapter 85, subchapter 4 and other Medicaid program laws, rules, and regulations regarding particular categories of service apply to participating providers and the services provided under the plan, except as specifically provided in this subchapter or the provider agreement.

(a) The provisions of ARM 37.85.414 regarding maintenance of records and related issues applies to providers of mental health services under the plan.

(i) The department and any legally authorized agency of the state or federal government may inspect any facilities and records pertaining to services provided under the plan, including those of any provider participating in the plan.

(ii) Upon request, providers must provide complete copies of medical records to the department or its agents.

(b) For all enrolled youth, providers must comply with the same confidentiality requirements that apply to information regarding Medicaid recipients.

(c) The department may collect from a provider any overpayment under the plan as provided with respect to Medicaid overpayments in ARM 37.85.406. The department may recover overpayments by withholding or offset as provided in ARM 37.85.513.

(i) The notice and hearing provisions of ARM 37.5.310 and 37.85.512 apply to a department overpayment determination under (4)(c).

(d) The department may sanction a provider based upon the same grounds that sanctions may be imposed against a provider under the Montana Medicaid program, except that a sanction may not be imposed with respect to a provider's conduct or omission under the plan based upon a Medicaid requirement or prohibition that is not applicable to the plan under these rules.

(i) Sanctions imposed under (4)(d) may include termination or suspension from plan participation and required attendance at provider education sessions at the provider's expense.

(ii) The department must consider the factors listed in ARM 37.85.505 in determining whether to impose a sanction and what sanction, if any, to impose. The provisions of ARM 37.85.506 and 37.85.507 shall apply to any sanction imposed under (4)(d).

(iii) The notice and hearing provisions of ARM 37.5.310 and 37.85.512 apply to a department sanction determination under (4)(d).

(5) An enrolled provider has no right to an administrative review or fair hearing as provided in ARM 37.5.113 and 37.85.411 or any other department rule for:

(a) a determination by the department or its agent that a particular service, item, or treatment is not medically necessary; or

(b) any other issues related to the provider agreement, the provision of services to recipients or the plan, except as specifically permitted by this subchapter.

(6) An enrolled provider shall be provided an opportunity for administrative review and fair hearing as provided in ARM 37.5.310 to contest a denial of correct payment by the department to the provider for a service provided to a youth if:

(a) the department has determined that the particular service, including the amount, duration and frequency of the service, is medically necessary for the youth to treat a covered diagnosis and has authorized the particular service for the youth according to applicable requirements; and

(b) the department has determined that the youth is eligible for the plan according to the requirements of [RULE III].

(7) For purposes of applying the provisions of any Medicaid rule as required by this subchapter, references in the Medicaid rule to "Medicaid" or the "Montana Medicaid program" or similar references, shall be deemed to apply to the plan as the context permits.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VII MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, AUTHORIZATION REQUIREMENTS

(1) The MHS plan for youth with serious emotional disturbance does not require prior authorization of covered services.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VIII MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PREMIUM PAYMENTS, AND

COPAYMENTS (1) Youth enrolled in the MHS plan are exempt from premium payments and copayments.

(2) The Medicaid copayment provisions of ARM 37.85.204 are not applicable to mental health services provided under the MHS plan.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE IX MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REIMBURSEMENT

(1) Reimbursement of enrolled providers for mental health services covered under the plan and provided to MHS plan youth is as provided in ARM Title 37, chapters 5, 40, 82, 85, 86, and 88 for the same service or category of service under the Montana Medicaid program, except as otherwise provided in this subchapter.

(a) For services covered under the plan, reimbursement under the plan is subject to the same requirements, restrictions, limitations, rates, fees, and other provisions that would apply to the service if it were provided to a Medicaid recipient, except as otherwise provided in these rules. However, if a service is not covered under the plan, the fact that the service is or would be covered by Medicaid if provided to a Medicaid recipient, does not entitle the provider, youth, or any other person or entity to coverage or reimbursement of the service under the plan.

(i) For purposes of applying Medicaid rules to plan services, a person eligible for the plan under [RULE III] is not Medicaid eligible.

(2) Provider claims for mental health services provided to youth under the plan must be submitted to the department's Medicaid Management Information System (MMIS) contractor according to requirements set forth in ARM 37.85.406. Payments will be made to the provider through the department's Medicaid MMIS contractor.

(3) Providers must accept the amounts payable under this rule as payment in full for services provided to youth. For purposes of this rule, the requirements of ARM 37.85.406 regarding payment in full apply to the provider, except as provided in this subchapter.

(a) Providers may bill a youth who fails to show up for a scheduled service if such billing is consistent with a written policy maintained and posted by the provider, if the youth has been informed of the policy in writing, and if the policy applies equally to private pay patients and members.

(4) The provisions of ARM 37.85.407 apply with respect to third party resources and seeking payment from these sources.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE X MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, NOTICE, GRIEVANCE AND RECONSIDERATION, AND RIGHTS

(1) The department or its designee must notify the youth or the youth's designated representative in writing of a decision denying eligibility or a request for services. The requirements of ARM 37.5.505 do not apply to the notice. The notice will state:

- (a) the youth's name and identifying information;
- (b) a statement of the decision, including the specific services, dates, and other information necessary to identify the matter at issue;
- (c) a concise statement of the reasons for the decision; and
- (d) an explanation of how to request a grievance or reconsideration regarding the determination.

(2) If the department fails to provide notice or fails to timely provide notice or if a notice required by (1) fails to comply substantially with the requirements of (1), the remedy is the provision of a new notice which does comply substantially with (1) and a new opportunity to request a reconsideration regarding the decision specified in the notice. A failure to give adequate or timely notice under (1) does not entitle the member to an authorization for the services that were denied.

(3) A youth has the right to any applicable grievance processes provided in ARM 37.5.318(5)(a) regarding a denial or termination of plan eligibility.

(4) The department or its designee may request additional supporting information or documentation from the youth or the provider for purposes of a grievance or informal reconsideration.

(a) The department will consider the written materials submitted and the rationale for the decision. In its discretion, if the department finds that resolution of the issues would be aided, the department may contact persons involved in the case, interested agencies, or mental health professionals and may request that the youth, youth's representative, a mental health professional, a provider representative, or other appropriate persons to appear in person or by telephone conference to discuss the case.

(b) The department must make a decision on the informal reconsideration and notify the youth or the youth's representative in writing of the decision.

(5) A youth must request a grievance according to the requirements specified by the department's designee.

(6) A youth must request an informal reconsideration within 30 days after receiving notice of the grievance decision. A youth that does not timely request an informal reconsideration is deemed to have accepted the determination and is not entitled to any further notice or review opportunity.

(7) A youth is not entitled to continuation of benefits under these rules, ARM 37.5.316, or 42 CFR, part 431, subpart E.

(8) A youth is entitled only to the processes specifically provided in this rule to contest an adverse decision by the department or its designee.

(9) A youth is not entitled to any grievance, reconsideration, review, hearing, or other appeal process with respect to changes in eligibility coverage or other plan benefits which result from generally applicable changes in eligibility requirements, coverage provisions, rates, imposition of limitations, or other changes.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE XI YOUTH SYSTEM OF CARE ACCOUNT, REQUIREMENT (1) The department shall use funds from this account to reimburse in state or community based service providers that allow high risk youth with multiagency service needs to be served in the least restrictive and most appropriate setting.

(2) The youth must be eligible for Medicaid.

(3) The youth must meet serious emotional disturbance (SED) criteria outlined in [RULE II].

(4) The youth must be at high risk for one of the following:

(a) needing more restrictive level of care;

(b) remaining in restrictive level of care if no other appropriate placement options are available;

(c) posing a safety risk to self or others; and

(d) having multiple treatment and/or placement failures.

(5) The services the youth receives:

- (a) shall provide for the care and protection and mental, social, and physical development of the high risk youth with multiagency service needs;
- (b) must be specified in the youth's integrated treatment plan and are not eligible for reimbursement from another source;
- (c) must be identified as part of a multiagency planning process;
- (d) shall maintain the youth in a community setting or return the youth to a community setting as a priority; and
- (e) shall place high-risk youth out-of-state as a last resort.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

4. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.88.206 LICENSED CLINICAL SOCIAL WORK SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for licensed clinical social worker services:

- (a) For patients who are eligible for Medicaid, the lower of:
 - (i) remains the same.
 - (ii) ~~62% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212.~~ the amount specified in the department's Medicaid mental health fee schedule.

(3) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.306 LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for licensed professional counselor services:

- (a) For patients who are eligible for Medicaid, the lower of:
 - (i) remains the same.
 - (ii) ~~62% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212.~~ the amount specified in the department's Medicaid Mental Health Fee Schedule.

(3) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.606 LICENSED PSYCHOLOGIST SERVICES, REIMBURSEMENT

- (1) remains the same.
- (2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for licensed psychologist services:
 - (a) For patients who are eligible for Medicaid, the lower of:
 - (i) remains the same.
 - (ii) ~~62% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212.~~ the amount specified in the department's Medicaid Mental Health Fee Schedule.
- (3) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

- (1) and (2) remain the same.
- (3) "Correctional or detention facility" means:
 - (a) and (b) remain the same.
 - ~~(c) the Pine Hills youth correctional facility;~~
 - ~~(d) the Riverside youth correctional facility;~~
 - (e) remains the same but is renumbered (c).
 - ~~(f) a juvenile detention center;~~
 - (g) and (h) remain the same but are renumbered (d) and (e).
- (4) "Covered diagnosis" means a diagnosis for which the Mental Health Services Plan provides covered services to members who have a severe disabling mental illness, as specified in ~~ARM 37.89.114~~ 37.86.3501.
 - ~~(a) A "covered diagnosis" means one of the ICD-9-CM diagnosis codes numbered 290, 293, 293.0 through 302, 302.2, 302.4, 302.6, 302.84 through 302.89, 306, 306.0 through 307, 307.1 through 307.3, 307.46, 307.5 through 307.80, 307.82 through 312.30, 312.32 through 314.9 and 316.~~
 - (5) and (6) remain the same.
 - (7) "Federal poverty level" or "FPL" means the 2000 poverty guidelines for the 48 contiguous states and the District of Columbia as published under the "Annual Update of the HHS Poverty Guidelines" in the Federal Register each year on or about February 15, 2000 and subsequent annual updates.
 - (8) through (14) remain the same.
 - ~~(15) "Serious emotional disturbance (SED)" is defined in ARM 37.86.3702(2).~~
 - ~~(16)~~ (15) "Severe disabling mental illness" is defined in ARM 37.86.3501.
means with respect to a person who is 18 or more years of age that the person meets the requirements of (16)(a), (b), or (c). The person must also meet the requirements of (16)(d). The person:
 - ~~(a) has been involuntarily hospitalized at least 30 consecutive days because of a mental disorder at Montana State Hospital (Warm Springs campus) at least once;~~
 - ~~(b) has a DSM-IV diagnosis with a severity specifier of moderate or severe~~
of:

- ~~(i) schizophrenic disorder (295);~~
- ~~(ii) other psychotic disorder (295.40, 295.70, 297.1, 297.3, 298.9, 293.81, 293.82);~~
- ~~(iii) mood disorder (293.83, 296.2x, 296.3x, 296.40, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);~~
- ~~(iv) amnestic disorder (294.0, 294.8);~~
- ~~(v) disorder due to a general medical condition (310.1);~~
- ~~(vi) pervasive developmental disorder not otherwise specified (299.80) when not accompanied by mental retardation;~~
- ~~(vii) anxiety disorder (300.01, 300.21, 300.3); or~~
- ~~(c) has a DSM-IV diagnosis with a severity specifier of moderate or severe of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full-time basis or to be unable to maintain a residence without assistance and support by family or a public agency for a period of at least six months or for an obviously predictable period over six months; and~~
- ~~(d) has ongoing functioning difficulties because of the mental illness for a period of at least six months or for an obviously predictable period over six months, as indicated by at least two of the following:~~
 - ~~(i) a medical professional with prescriptive authority has determined that medication is necessary to control the symptoms of mental illness;~~
 - ~~(ii) the person is unable to work in a full-time competitive situation because of mental illness;~~
 - ~~(iii) the person has been determined to be disabled due to mental illness by the Social Security Administration;~~
 - ~~(iv) the person maintains a living arrangement only with ongoing supervision, is homeless or is at imminent risk of homelessness due to mental illness; or~~
 - ~~(v) the person has had or will predictably have repeated episodes of decompensation. An episode of decompensation includes increased symptoms of psychosis, self-injury, suicidal or homicidal intent or psychiatric hospitalization.~~
- ~~(17) through (17)(a)(ii) remain the same but are renumbered (16) through (16)(a)(ii).~~
- ~~(18) "Youth" means a person 17 years of age and younger or a person who is under 20 years of age and is enrolled in secondary school.~~
- ~~(19) (17)~~ The department adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the Ingenix ICD-9-CM Code Book (2006) valid October 1, 2006 through September 30, 2007, published by Ingenix. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated herein in order to provide common references for purposes of the provision of services through the Mental Hhealth Services Plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT

59620-2905 (for adult services) or the Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 (for youth services).

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) An individual is eligible for covered services under the plan if:

(a) the individual is ~~a youth with a serious emotional disturbance~~ or an adult with a severe disabling mental illness; and the family of which the individual is a member has a total family income, without regard to other family resources, at or below 150% of the most recently published federal poverty level (FPL);

(b) remains the same.

~~(c) the individual is under the age of 19 years and the individual has been denied enrollment in Montana Children's Health Insurance Program (CHIP), as established in ARM Title 37, chapter 79;~~

~~(d) the individual is an adolescent who has met the eligibility requirements of the plan as a youth with serious emotional disturbance, but who will not meet the eligibility requirements of the plan as an adult with severe and disabling mental illness. The individual may continue to be eligible as an adolescent for the purpose of transition to independent living until the age of 21, provided the individual continues to meet income requirements;~~

~~(e) (c) the total number of children and the total number of adults who can be eligible for MHSP at any time is within the limits set by the department as provided in (6); and~~

~~(f) (d) the individual is eligible for Medicare, is enrolled in a Medicare prescription drug plan or Medicare Advantage Plan, and has applied for subsidy extra help from the Social Security Administration and, if necessary, premium assistance from Big Sky Rx.~~

(2) through (5)(a)(ii) remain the same.

(6) If the department determines that the average per-case cost of the Mmental Hhealth Sservices Pplan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

(a) through (b)(iii) remain the same.

(c) no person enrolled in the MHSP on September 4, ~~2000~~ 1, 2008, shall be determined ineligible solely as a result of the determination by the department provided for in (6)(a).

(d) notwithstanding the provisions of (6)(a) through (c) ~~of this rule~~, the department may enroll a qualified applicant if the applicant is:

(i) remains the same.

(ii) in imminent physical danger due to a life-threatening mental health emergency a person with recurrent thoughts of death, recurrent suicidal ideation or suicide attempt, or a specific plan for committing suicide.

AUTH: 41-3-1103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-6-706, 53-21-703, MCA

IMP: 41-3-1103, 52-2-603, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) Authorized medically necessary mental health services for a covered diagnosis are covered under the plan for members, except as provided in this subchapter.

~~(2) Covered services for youth include:~~

(a) evaluation and assessment of psychiatric conditions by licensed and enrolled mental health ~~providers~~ professionals as defined in ARM 37.106.1902 or licensed and enrolled health care professionals as defined in ARM 37.106.1902;

(b) primary care providers, as defined in ARM 37.86.5001(25), for screening and identifying psychiatric conditions and for medication management;

(c) a psychotropic drug formulary, as specified in ~~(7)~~(5) ;

(d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis; and

~~(e) psychological assessments, treatment planning, individual, group and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of covered diagnoses in private practice or in mental health centers; and~~

~~(f)~~ (e) mental health center services.

~~(3) Covered services for adults include:~~

~~(a) services provided by a licensed mental health center contracted with the department for services to adults enrolled in the plan;~~

~~(b) primary care providers, as defined in ARM 37.86.5001(25), for screening and identifying psychiatric conditions and for medication management;~~

~~(c) a psychotropic drug formulary, as specified in (7);~~

~~(d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis.~~

(4) through (7) remain the same but are renumbered (2) through (5).

~~(8)~~ (6) Except as provided in ~~(8)(a)~~ (6)(a), the plan covers medically necessary mental health services for covered diagnoses for members who are residents of nursing facilities, regardless of whether the services are provided in the nursing facility.

(a) The plan does not cover services defined as "nursing facility services" in ARM 37.40.302 or otherwise required by law to be provided by the nursing facility and does not cover or reimburse the nursing facility for services provided by the nursing facility.

(9) remains the same but is renumbered (7).

~~(10)~~ (8) The plan does not cover:

(a) inpatient or emergency hospital services;

~~(a) (b) any form of transportation services; and~~
~~(c) drug or alcohol detoxification.~~
~~(b) detoxification, drug or alcohol evaluation, treatment or rehabilitation,~~
~~regardless of the member's diagnosis; and~~
~~(c) services provided to a nonmember who is eligible on an emergency basis~~
~~during a hospital emergency room visit.~~

~~(11) (9)~~ A member who is an inmate in or incarcerated in a correctional or detention facility is not entitled to services under the plan, except as specifically provided in these rules.

(a) The plan covers discharge planning services in relation to a covered diagnosis prior to release from a correctional or detention facility for a member who is:

- (i) within 60 days of release;
- ~~(ii) a youth under the custody of the department's division of child and family services or the department of corrections and who is in a correctional or detention facility;~~
- ~~(iii) (ii) a prisoner in a correctional or detention facility; or~~
- ~~(iv) (iii) a forensic patient, as specified in (8)(a) (6)(a), admitted to the Montana state hospital; or~~
- ~~(v) being held in a juvenile correction facility.~~

(b) A member incarcerated in a local government criminal detention facility who has not been adjudicated may receive medically necessary mental health services for covered diagnosis during incarceration, except that the plan does not cover the member's security or detention needs.

(c) A member may receive medically necessary mental health services for covered diagnoses after leaving the correctional or detention facility, except that the plan does not cover the individual's security or detention needs.

(12) through (12)(a)(ii) remain the same but are renumbered (10) through (10)(a)(ii).

AUTH: 41-3-1103, 52-1-103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-706, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.115 MENTAL HEALTH SERVICES PLAN, PROVIDER PARTICIPATION (1) through (1)(b) remain the same.

(2) Providers in the following categories may request enrollment in the plan:

- (a) licensed mental health centers;
- (b) and (c) remain the same.
- (d) licensed psychologists employed by a mental health center;
- (e) licensed clinical social workers employed by a mental health center;
- (f) licensed professional counselors employed by a mental health center; and
- (g) outpatient pharmacies;
- (h) labs; and
- (i) rural health clinics and federally qualified clinics as defined in 42 CFR 491.

(3) through (7) remain the same.

AUTH: 2-4-201, 41-3-1103, 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 2-4-201, 41-3-1103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.118 MENTAL HEALTH SERVICES PLAN, AUTHORIZATION REQUIREMENTS (1) The prior authorization, notification, and other provisions of ARM 37.88.101 apply to the Mmental Hhealth Sservices Pplan provided in this subchapter.

(a) For purposes of applying the provisions of ARM 37.88.101 to the Mmental Hhealth Sservices Pplan, references in ARM 37.88.101 to "Medicaid recipient" and "recipients" shall be deemed references to the Mmental Hhealth Sservices Pplan members, and references to the "Montana Medicaid Program" shall be deemed references to the mMental hHealth sServices pPlan.

~~(b) Services provided to adult members of the mental health services plan are exempt from the prior authorization provisions of ARM 37.88.101.~~

AUTH: 53-2-201, 53-21-703, MCA

IMP: 53-2-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.119 MENTAL HEALTH SERVICES PLAN, PREMIUM PAYMENTS, AND MEMBER COPAYMENTS (1) A member of the plan must pay to the provider the following copayment not to exceed the cost of the service:

(a) for each outpatient visit or service, other than pharmacy services, \$10 or a lesser amount designated by the department; and

(b) for each filling of a prescription, the lesser of the cost of that particular filling or \$25, or a lesser amount designated by the department; and.

~~(c) for each out-of-home admission, \$50 or a lesser amount designated by the department.~~

(2) remains the same.

AUTH: 53-2-201, 53-6-113, 53-6-131, 53-21-703, MCA

IMP: 53-1-405, 53-1-601, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-131, 53-21-701, 53-21-702, MCA

37.89.131 MENTAL HEALTH SERVICES PLAN, MEMBER NOTICE, GRIEVANCE AND RECONSIDERATION, AND RIGHTS (1) through (2) remain the same.

(3) A member has the right to any applicable grievance processes provided by the department's review designee referred to in ARM 37.89.118 and, following exhaustion of such grievance processes, an informal reconsideration as provided in ARM 37.5.318(5)(a) regarding a denial or termination of plan eligibility, a denial of authorization or coverage of services, a determination that a member is liable to the department as provided in ARM 37.89.106 based upon a misrepresentation, or failure to provide notification of changes in income or family composition, or a determination that a member is liable to the provider as provided in ARM 37.89.106

~~based upon failure to apply for plan eligibility within 60 days following completion of emergency treatment.~~

(4) through (10) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, 53-6-706, 53-21-703, MCA

IMP: 2-4-201, 53-1-601, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-706, 53-21-202, 53-21-701, 53-21-703, MCA

5. The rules as proposed to be repealed provide as follows:

37.86.112 MENTAL HEALTH SERVICES PLAN, OUTPATIENT DRUGS FOR BENEFICIARIES ELIGIBLE FOR MEDICARE, is found on page 37-22187 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-21-701, MCA

37.89.135 MENTAL HEALTH SERVICES PLAN, TRANSITION FROM RULES IN EFFECT PRIOR TO JULY 1, 1999, is found on page 37-22231 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-1-601, 53-1-612, 53-2-201, 53-21-202, MCA

6. The Department of Public Health and Human Services (the department) is proposing the adoption of new Rules I through XI, the amendment of ARM 37.88.206, 37.88.306, 37.88.606, 37.89.103, 37.89.106, 37.89.114, 37.89.115, 37.89.118, 37.89.118, and 37.89.131, and the repeal of ARM 37.86.112 and 37.89.135 pertaining to the Mental Health Services Plan (MHSP). The proposed changes include increased Medicaid reimbursement rates for providers of mental health services to MHSP enrollees, revised enrollment standards for adults, and technical changes to the rules for enrollees and providers of MHSP services to persons 17 and younger. The department is taking this opportunity to reorganize the MHSP rules so the provisions governing youths will appear in a separate chapter of the Administrative Rules of Montana (ARM).

The changes are necessary to enable the department to transition the Mental Health Services Plan to a fee-for-service program as mandated by the 2007 Montana Legislature. Although the current rule allows the department to limit services, rates, eligibility, or the number of persons determined eligible under the plan based upon such factors as availability of funding, degree of financial need, or other factors, the rules need to be updated to clearly identify the services and providers to be included in the plan.

If the department did not amend these rules, administration of the plan would be complicated by ambiguous sections related to covered services and provider types.

RULE I

Proposed new Rule I would include definitions generally applicable to the youth mental health services. The definitions are substantially the same as definitions currently found at ARM 37.88.1102 and 37.89.103. In addition, the Children's System of Care Account definition refers to the department's ability to fund the administration and delivery of services to high risk children. The Children's System of Care Account was created pursuant to 52-2-309, MCA.

The proposed new Rule I is part of the reorganization of the mental health rules for youth with serious emotional disturbance (SED). The department's alternative to the proposed changes was to leave these various definitions located throughout the many rules for the department. The department did not choose this alternative because it would be difficult for consumers and providers to locate rules for youth with SED. Departmental staff will more readily be able to maintain the rule set and maintain federal and state compliance should requirements change.

The proposed rule does not increase or decrease fees, costs, or benefits. No fiscal or benefit effects are expected as a result of this proposed rule.

RULE II

Proposed new Rule II would contain the criteria for designating a youth "seriously emotionally disturbed". No substantive change to the established criteria is intended. Under this proposal, the SED definitions would be removed from the rules for targeted case management services to youth.

There was some reformatting included in the proposed new rule. Previous (3) was changed to (d) to more accurately reflect the criteria. (2) adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the Ingenix ICD-9-CM Code Book (2006), published by Ingenix. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated in order to provide common references for purposes of the provision of services to youth through the Mental Health Services Plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

The proposed new Rule II is part of the reorganization of the mental health rules for youth with serious emotional disturbance. The department's alternative to the proposed new rule is to leave the definitions located throughout the department's many rules. The department did not choose this alternative because it would be difficult for consumers and providers to locate rules for youth with SED. Department

staff will more readily be able to maintain the rule set and maintain federal and state compliance should requirements change.

The proposed rule does not increase or decrease fees, costs, or benefits. No fiscal or benefit effects are expected as a result of this proposed rule.

NEW RULES III THROUGH XI

Proposed new Rules III through XI reflect the reorganization of the MHSP rules for youth with SED into its own subchapter. There are some changes within the rules as discussed below:

Proposed new Rule III specifies MHSP eligibility criteria. It limits youth eligibility for covered services under the MHSP to youths 17 years of age or younger with a serious emotional disturbance. A youth may not be eligible for MHSP if the youth is eligible for Medicaid or the Children's Health Insurance Plan (CHIP).

CHIP bureau staff compute the financial eligibility for youth with SED applying for the MHSP. The proposed rule references the criteria outlined in the CHIP rules because those are the criteria used for computing eligibility for youth with SED with the following exceptions:

Annual family income without regard to other family resources must be at or below 160% of the FPL, the maximum amount allowable under 53-21-702, MCA. CHIP eligibility standards allow income to be as great as 175% of the FPL. None of the applicant's family members may be employed by the state of Montana. The applicant's family does not have to meet the CHIP requirement of having no creditable health insurance coverage prior to the date of application.

Proposed new Rule III is intended to cover youth with SED through age 17 and younger. Adult MHSP starts at age 18 for applicants with severe disabling mental illness (SDMI) and provides a benefit package more beneficial to MHSP enrollees. Therefore, the CHIP eligibility rules are referenced with the exceptions listed above.

The department considered and rejected discontinuation of the MHSP for youth with SED. After discussion with adult mental health services staff, the department chose the proposed new rules as the most appropriate option.

The department cannot determine if there will be an increase or decrease in benefits for individuals seeking mental health treatment services. In state fiscal year (SFY) 2007, there were 80 youth receiving MHSP services. Total cost of services for those youths were \$17,562.86.

Proposed new Rule IV limitations are part of the reorganization and is identical to the current language in the MHSP rules for adults. Rather than repeat this language throughout the MHSP rules, it has been reorganized to its own chapter for clarity.

The department's alternative to proposed new Rule IV regarding limitations was to follow the existing MHSP rules as amended and repeat the limitations throughout the various rules for MHSP for youth with SED. The department chose to list these requirements in one subchapter to enable consumers and providers easier access to the information.

The proposed rules will not increase or decrease monetary benefit amounts. In SFY 2007, there were 80 youth receiving MHSP services for a total of \$17,562.86.

The department's alternative was to keep MHSP rules for adults and youth in one rule set. The department chose to separate youth MHSP rules into its own subchapter for clarity and accessibility.

Proposed new Rule VI is part of the reorganization from Title 37, chapter 89 to a new chapter except that mental health centers may not provide services under the MHSP plan. Licensed providers employed by a mental health center may enroll as a Medicaid provider and provide services to youth with SED who are covered under the MHSP plan. This proposal is the same for adults and youth.

The proposed new rule will not increase or decrease monetary amounts.

MHSP services provided to youth with SED do not require authorization. The proposed new Rule VII would state the current policy in a new subchapter of the rules.

The proposed new rule will neither increase or decrease benefits nor expenditures.

Proposed new Rule VIII provides that MHSP services to youth with SED are not subject to premium payments and copayments. This is current policy and the new rule is part of the reorganization. No substantive change is intended.

Proposed new Rule IX contains notice, grievance, reconsideration, and rights in the event of an adverse action by the department. The new rule is a reorganization of ARM 37.89.131, the existing rule for adults and youth who are aggrieved by an adverse action. The department is proposing these procedural "due process rights" appear in rule sets for adults and for youth.

Proposed new Rule X contains the provider reimbursement regulations for MHSP services to individuals 17 and younger. It is similar to ARM 37.89.125. No substantive change is intended. This is part of the reorganization of the rules.

RULE XI

The proposed new rule for the system of care account implements 52-3-309, MCA. The proposal provides for the use of funds from the account to reimburse in state or community based services providers for high risk youth with multiagency services

needs. Services should be provided in the least restrictive and most appropriate setting.

The department was directed by the 2007 Montana Legislature, through 2007 Laws of Montana, Chapter 123 to establish administrative rules for the Children's System of Care Account. Therefore, no alternative was considered.

The proposed new rule would increase opportunities for high risk youth with SED and multiagency service needs to access funding. The fiscal effect of the rule is limited to \$500,000. An unknown number of individuals 18 and younger will be affected because the cost of the services will determine the number of youth served.

ARM 37.88.206

The department is proposing an amendment to this rule providing for reimbursement of licensed clinical social worker services that would refer to the department's Medicaid Mental Health Fee Schedule. This amendment is proposed for the purposes of bringing the rule into conformity with current department rulemaking practices. No changes to the methodology are intended. The department considered and rejected the option of leaving the rule unchanged because it would adversely result in lower than intended reimbursement amounts for these services.

ARM 37.88.306

The department is proposing an amendment to this rule providing for reimbursement of licensed clinical social worker services that would refer to the department's Medicaid Mental Health Fee Schedule. This amendment is proposed for the purposes of bringing the rule into conformity with current department rulemaking practices. No changes to the methodology are intended. The department considered and rejected the option of leaving the rule unchanged because it would adversely result in lower than intended reimbursement amounts for these services.

ARM 37.88.606

The department is proposing an amendment to this rule providing for reimbursement of licensed clinical social worker services that would refer to the department's Medicaid Mental Health Fee Schedule. This amendment is proposed for the purposes of bringing the rule into conformity with current department rulemaking practices. No changes to the methodology are intended. The department considered and rejected the option of leaving the rule unchanged because it would adversely result in lower than intended reimbursement amounts for these services.

ARM 37.89.103

The department is proposing amendments to this rule as part of the reorganization explained in the discussion of proposed new Rules I through XI above. This rule would retain only the definitions applicable to the adult MHSP. Also, the department

is proposing to refer to ARM 37.86.3401 rather than duplicating the definition of "severe disabling mental illness" in this rule. No substantive changes to the definitions are intended.

ARM 37.89.106

The department is proposing amendments to this rule as part of the reorganization explained in the discussion of proposed new Rules I through XI above. This rule would retain only the eligibility standards applicable to the adult MHSP. Also, the department is proposing to amend the provision that an individual at risk of suicide is in a priority group that would be enrolled without consideration of enrollment caps. The amendment is intended to state the existing department policy more clearly.

ARM 37.89.114

The department is proposing amendments to this rule as part of the reorganization explained in the discussion of proposed new Rules I through XI above. This rule would retain only the covered services applicable to the adult MHSP. The department is also proposing an amendment to specifically refer to the rules defining "mental health professionals" and "licensed and enrolled health care professionals" to clearly identify the services and providers included in the plan.

ARM 37.89.115

The department is proposing amendments to this rule to more specifically identify the providers included in the MHSP.

ARM 37.89.118

The department will require that some services require prior authorization by department staff to assure the clinical appropriateness of the service.

ARM 37.89.119

The department does not intend to require a copay for out-of-home admissions under the Mental Health Services Plan. Reference to a copay has been removed.

ARM 37.89.131

The Mental Health Services Plan does not reimburse for emergency treatment and the reference to such treatment has been removed.

ARM 37.86.112

The department is proposing repeal of the rule pertaining to enrollee liability after emergency mental health services have been provided. The rule is outdated.

ARM 37.89.135

Reference to transition to Mental Health Services Plan prior to July 1, 1999 has been removed as dated information.

Estimated Budget Effects

The department estimates the cumulative fiscal effect of these proposed amendments would be \$7,719,834, the appropriation for the Mental Health Services Plan for services provided to eligible adult beneficiaries.

Persons and Entities Affected

There are 5000 individuals over 18 years of age with mental health diagnoses who could be affected. There are seven licensed mental health centers who provide mental health services to individuals over 18 years of age that could be affected. There are an estimated 75 additional providers including physicians, psychiatrists, mid-level practitioners, federally qualified health clinics, rural health clinics, and labs.

There are approximately 9000 youth receiving mental health services each year. There are approximately 100 providers of mental health services to individuals 17 years of age and younger that could be affected.

7. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on August 14, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this Notice conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

10. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State July 7, 2008.